
(2010) 05 AHC CK 0179

Allahabad High Court

Case No: Writ Petition No. 309 of 2010 (M/S)

Sheela W/o Sri Jairam

APPELLANT

Vs

Shri Vijay Pal Singh
and Ors.

RESPONDENT

Date of Decision: May 31, 2010

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229, 333

Hon'ble Judges: V.K.Bist, J

Final Decision: Allowed

Judgement

V.K. Bist, J.

Present petition has been filed by the petitioner challenging the order dated 03.03.2010 (annexure no. 5 to the petition) passed by the learned Addl. Chief Revenue Commissioner, Dehradun in Revision No. 104 of 2010 "Shri Vijay Pal Singh vs. Smt. Sheela and others".

2. Brief facts of the case, as narrated in the petition, are that on 16.11.2009 the petitioner instituted a Suit No. 27 of 200910 "Smt. Sheela vs. Shri Vijay Pal Singh and others", under Section 229B of The Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 (hereinafter referred to as the Act), before the Assistant Collector, 1 st Class, Vikas Nagar, Dehradun for declaring the petitioner as owner and in possession over the property in dispute (i.e. the land Khasra No. 1293 Rakba 0.1500 hectare situated in village Badama Wadla, Pargana Pachawadoon, District Dehradun) on the basis of family settlement and also for mutating the name of the petitioner after cancelling the name of the respondents. Alongwith the said suit, the petitioner also moved an application for interim injunction under Section 229D of the Act. It has been alleged in the petition that the respondent nos. 1 & 2 tried to grab the land of the petitioner, which petitioner has obtained through her inheritable rights after the death of her father late Sri Pooran, being his sole legal heir, on the basis of family settlement. The respondent nos. 1 & 2 always used to threaten the petitioner for selling the land in dispute to respondent no.2. They

have also got entered their names in the revenue records, after executing a forged sale deed dated 22.06.2009. The respondent nos. 1 & 2 in furtherance to fulfill their aim, on 02.11.2009, came over the property in dispute and tried to dig foundation over the same and on restraining, they threatened the petitioner of dire consequences. It has been further asserted that after the death of her father, the petitioner also moved application before the Tehsildar, Vikas Nagar, for mutating her name in place of her father, which is pending for disposal. The learned Trial Court, after considering the case of the petitioner vide order dated 16.11.2009 registered the said suit and also granted interim order in favour of the petitioner/plaintiff restraining the defendant/respondent nos. 1 to 4 from raising any construction over the property in dispute. But the respondent no.1 instead of filing written statement and moving application for vacating the interim order dated 16.11.2009, preferred a Revision (bearing No. 104 of 2010 "Vijay Pal Singh vs. Smt. Sheela and others") before learned Addl. Chief Revenue Commissioner (for brevity ACRC) under Section 333 of the Act. The learned ACRC vide impugned order dated 03.03.2010 allowed the said revision preferred by respondent no.1 at the admission stage, without issuing notices to the petitioner and also without hearing to the petitioner and set aside the order dated 16.11.2009 passed by the Trial Court. It has been further asserted that the respondent is trying to raise construction over the property in dispute and in the event, if the impugned order is permitted to be continued, the entire purpose of filing application for interim relief under Section 229D of the Act will be frustrated. Hence this petition.

2. The respondent nos. 1 & 2, who are said to have been the main contesting parties, filed their counter affidavit stating therein that the suit under Section 229B of the Act has been filed on 16.11.2009 subsequent to the suit for cancellation of sale deed which was filed on 05.11.2009. The respondents have a registered sale deed dated 22.06.2009 executed in their favour. It is stated that the petitioner admits that her name has not been recorded in the revenue records. It is stated in the counter affidavit that the order dated 16.11.2009 was beyond the ambit of Section 229D of the Act and beyond the ambit of Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908. Further, against the grant of *ex parte* injunction under Section 229D of the Act, it is open to a party aggrieved either to pray for vacating of a stay order or have a recourse available under the law to approach the superior Court and filing of stay vacation or written statement is not a condition precedent for the purpose of filing of a revision under Section 333 of the Act and both the recourses are available to the defendant against whom the *ex parte* injunction is granted. So far raising of construction is concerned, the case under Section 229B of the Act is to be outside the purview of Chapter 8 because of the change of the use of land not being agricultural in nature, hence no injunction could have been granted. Apart from it, the suit under Section 229B 4 of the Act itself deserves to be dismissed more particularly when the same is based upon the fact that the defendants are raising constructions over the land. It is further submitted that the order dated 16.11.2009 was rightly set aside by the ACRC while exercising powers under Section 333 of the Act as by virtue of Section 341 of the Act, the provisions of C.P.C. is made applicable to the proceedings under the Act,

hence the ingredients and the limitations imposed by Order 39 Rule 1 & 2 C.P.C. will be applicable when the Trial Court is considering an application for grant of injunction under Section 229B of the Act.

3. I have heard Shri Ram Ji Srivastava, the learned counsel for the petitioner, Shri Sharad Sharma, Senior Advocate assisted by Shri Lalit Tewari, the learned counsel for respondent no.1, Shri R.C. Arya, the learned Brief Holder for the State/respondent no.5 and perused the record.

4. Shri Ram Ji Srivastava, the learned counsel for the petitioner argued that the learned ACRC has allowed the revision mainly on the ground that the order passed by the learned Trial Court was *ex parte*, as same was passed without giving sufficient opportunity of hearing to the parties. He argued that the observation of the learned ACRC is totally unsustainable in the eye of law as Section 229D of the Act itself provides that if the Trial Court finds that the property in suit is in danger of being wasted or otherwise the Trial Court is satisfied that the same may be damaged by either of the parties, in that event the Trial Court, in order to defeat the ends of justice, may grant temporary injunction. Learned counsel for the petitioner 5 referred Section 229D of the Act which is being reproduced hereunder:

229D. Provision for injunction

(1) If in the course of a suit under the provisions of sections 229B and 229C, it is proved by an affidavit or otherwise

(a) that any property, tree or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction, and where necessary, also appoint a receiver. ½

5. Learned counsel for the petitioner further submitted that the respondent no.1 preferred the revision directly before the learned ACRC, while he ought to have preferred the revision before the Commissioner. He submitted that it is settled law that normally, the revision or appeal, whichever is maintainable, should be filed by the aggrieved party firstly before available lower forum. He also argued that the learned ACRC has committed a gross error in passing the impugned order, as he has allowed the revision without providing any opportunity of hearing to the petitioner. The order of learned ACRC is an *ex parte* order which is not sustainable in the eye of law. The revision preferred by the respondent no.1 is not maintainable against an interlocutory order as the Trial Court restrained the respondent from raising construction over the property in dispute, therefore the order dated 03.03.2010 passed by the learned ACRC is liable to be quashed. Learned counsel for the petitioner relied on the judgment of Hon"ble Supreme Court rendered in Suresh Chandra Nanhorya vs. Rajendra Rajak and others, reported in 2006

(24) LCD1648. Paragraph 11 of the same is reproduced below.

“Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.”

6. On the other hand Shri Sharad Sharma, Senior Advocate for respondent nos. 1 & 2 submitted that the petitioner has challenged the order of Revisional Court dated 03.03.2010 mainly on the ground that the order of learned ACRC is an *ex parte* order and a revision against an *ex parte* order dated 16.11.2009 is not maintainable. In this regard learned Senior Counsel referred Section 333 of the Act and submitted that it contemplates the power of revision on its harmonious reading with sub Section (2) and the use of words "Board, Commissioner or Additional Commissioner" would mean that a revision can be filed before any of the authorities. He argued that the Sub Divisional Magistrate has granted an *ex parte* injunction restraining the respondents from raising any construction and as the said order falls within sub Clause (a) & (C) of Section 333 of the Act, therefore it was beyond the competence and jurisdiction of the Trial Court. He submitted that the order of Trial Court was revisable, because while granting an *ex parte* injunction, the Court has not recorded reasoning to justify the urgency for the purposes of granting an injunction. He further argued that when the proceedings under Section 229B of the Act is for declaration of rights in relation to a "holding" in a land covered under subSection (14) of Section 3 of the Act, no injunction could be granted, specially when it relates to an agricultural holding, hence the order of Trial Court is without jurisdiction. He submitted that the Legislature in its wisdom, while formulating Section 229 B, which was in relation to the proceedings under Section 229B & 229D has limited the nature of injunction. He further submitted that initially the petitioner had filed Suit No. 121/2009 before the regular Civil Court for cancellation of sale deed executed in favour of the respondent in which the concerned Court issued notices simplicitor and did not grant any injunction and to overcome the effect of nongranteeing of injunction, the present proceedings have been initiated by the petitioner. He submitted that the Revisional Court while passing the order dated 03.03.2010 has set aside the *ex parte* order dated 16.11.2009 and remitted the matter to the Trial Court to consider the application under 229D of the Act afresh, therefore no prejudice is caused to the petitioner as her application under Section 229D of the Act is yet to be considered. He argued that as far as the argument of the petitioner that the order dated 16.11.2009 passed by the S.D.M. was appealable in itself, will not bar the filing of revision which is yet opened by the provisions of Section 333 of the Act with an only rider that at the time of filing of revision, no appeal filed prior in time against the impugned order should be pending. Learned counsel for the respondents further argued that issuance of notices would not prejudice the petitioner, because the Revisional Court has remanded the matter for its fresh adjudication. Learned Senior Advocate for the respondents placed reliance on A.I.R. 1981 S.C. 707 and argued that the order under challenge is an order of remand which takes the shape of an interlocutory order and, as such, since the impugned order was not

adjudicating the rights of the parties and was interlocutory in nature, the writ petition is not maintainable. He further submitted that by the order of remand to the Revisional Court, no prejudice was caused to the petitioner because the lacuna as pleaded against the order dated 03.03.2010 could have been eradicated by the petitioner by putting in contest before the Trial Court so far as the propriety of the application under Section 229 D is concerned. In support of this argument he relied on 1999 vol5 JT114. He also argued that order under challenge should not be set aside on the ground that same was passed without issuance of notices because same would result into revival of a wrong order. In support of his argument he relied on 2000 (2) ARC page 661, (1999) 8 Supreme Court Cases 16 and Allahabad Rent Cases 1987 (2) S.C.513.

7. After hearing learned counsel for the parties and after considering the material available on record, this Court finds that order of Trial Court has been set aside by ACRC on the ground that Trial Court's order is an ex parte order and has been passed without giving sufficient opportunity to the parties. But, the learned ACRC committed same mistake and passed the impugned order without issuing notice to the petitioner. There is no mention in the order of ACRC that any notice was issued to the petitioner and same was served on him. Before deciding the case, notice to the parties concerned should have been issued and opportunity of hearing should have been provided. Thus, the order dated 03.03.2010 passed by learned ACRC suffers from this illegality. In these circumstances, the cases cited by the learned counsel for the respondents, do not apply in the present case.

8. Consequently, writ petition is allowed. Order dated 03.03.2010 passed by learned Additional Chief Revenue Commissioner, Uttarakhand, Dehradun in Revision No. 9 104/200910 is hereby set aside. Learned Additional Chief Revenue Commissioner, Uttarakhand, Dehradun is directed to decide the Revision no. 104 of 200910, afresh after providing opportunity of hearing to the petitioner.

9. No order as to costs.

10. Interim order dated 12.03.2010 passed by this Court stands vacated.